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NORTHERN DISTRICT OF CALIFORNIA

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CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
corporation,

Plaintiff,

vs.

CONTRA COSTA WASTE SERVICE
RECYCLING CENTER AND
TRANSFER STATION, a corporation.

Defendant.

Case No.

07-04484

BZ

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

ADR

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, by and through its
counsel, hereby alleges:

I. INTRODUCTION

1. This complaint seeks relief for Defendant's discharges of polluted storm water
and non-storm water pollutants from Defendant's facility ("the Facility") into the waters of
the United States in violation of the Act and the State of California's "Waste Discharge

COMPLAINT

GO 44 SEC. IV
NOTICE OF ASSIGNMENT
TO MAGISTRATE JUDGE SENT

1 Requirements (WDRs) For Discharges of Storm Water Associated With Industrial Activities
2 Excluding Construction Activities,” State Water Resources Control Board (“State Board”)
3 Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ
4 and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System
5 (“NPDES”) Permit No. CAS000001, (hereinafter “the Order” or “Permit”). Defendant’s
6 violations of the discharge, treatment technology, monitoring requirements, and other
7 procedural and substantive requirements of the Permit and the Act are ongoing and
8 continuous.

9 2. The failure on the part of persons and facilities such as Defendant and its
10 industrial facility to comply with storm water requirements is recognized as a significant
11 cause of the continuing decline in water quality of the Suisun Bay, San Francisco Bay
12 (“Bay”), and other area receiving waters. The general consensus among regulatory agencies
13 and water quality specialists is that storm pollution amounts to a substantial portion of the
14 total pollution entering the aquatic environment each year. With every rainfall event,
15 millions of gallons of polluted rainwater originating from industries within the surrounding
16 area pour into the Bay.

17 3. The continuing decline in water quality in the San Francisco Bay is a matter of
18 serious public concern. Data gathered by CalFed, a coalition of fifteen state and federal
19 agencies analyzing water allocation issues, has confirmed that the Bay is a heavily polluted
20 water body. The entire Bay and all of its major tributaries have been identified by the State
21 Board, the Regional Board, and EPA as impaired water bodies under Section 303(d) of the
22 Clean Water Act. 33 U.S.C. § 1313(d).

23 **II. JURISDICTION AND VENUE**

24 4. This is a civil suit brought under the citizen suit enforcement provisions of the
25 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or
26 “the Act”). This Court has subject matter jurisdiction over the parties and the subject matter
27 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is

1 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of
2 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§
3 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

4 5. On or about May 18, 2007, Plaintiff provided notice of Defendant's violations
5 of the Act, and of its intention to file suit against Defendant, to the Defendant; the
6 Administrator of the United States Environmental Protection Agency ("EPA"); the
7 Administrator of EPA Region IX; the Executive Director of the State Water Resources
8 Control Board ("State Board"); and to the Executive Officer of the Regional Water Quality
9 Control Board, San Francisco Bay Region ("Regional Board"). A true and correct copy of
10 CSPA's notice letter is attached as Exhibit A, and is incorporated by reference.

11 6. More than sixty days have passed since notice was served on Defendant and
12 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
13 neither the EPA nor the State of California has commenced or is diligently prosecuting a
14 court action to redress the violations alleged in this complaint. This action's claim for civil
15 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,
16 33 U.S.C. § 1319(g).

17 7. Venue is proper in the Northern District of California pursuant to Section
18 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
19 within this judicial district. Pursuant to Local Rule 3-2(c), intradistrict venue is proper in
20 Oakland, California because the sources of the violations are located within Contra Costa
21 County, California.

22 **III. PARTIES**

23 8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
24 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
25 California with its main office in Stockton, California. CSPA has approximately 2,000
26 members who live, recreate and work in and around waters of the State of California,
27 including Suisun Bay and San Francisco Bay. CSPA is dedicated to the preservation,
28 protection, and defense of the environment, the wildlife and the natural resources of all

1 waters of California. To further these goals, CSPA actively seeks federal and state agency
2 implementation of the Act and other laws and, where necessary, directly initiates
3 enforcement actions on behalf of itself and its members.

4 9. Members of CSPA reside in and around the Bay and enjoy using the Bay for
5 recreation and other activities. Members of CSPA use and enjoy the waters into which
6 Defendant has caused, is causing, and will continue to cause, pollutants to be discharged.
7 Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife
8 and engage in scientific study including monitoring activities, among other things.
9 Defendant's discharges of pollutants threaten or impair each of those uses or contribute to
10 such threats and impairments. Thus, the interests of CSPA's members have been, are being,
11 and will continue to be adversely affected by Defendant's failure to comply with the Clean
12 Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused
13 by Defendant's activities.

14 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant
15 CONTRA COSTA WASTE SERVICE RECYCLING CENTER AND TRANSFER
16 STATION (hereinafter "Defendant" or "Recycling Center") is a corporation organized under
17 the laws of California. Defendant Recycling Center operates a recycling center and transfer
18 station in Pittsburg, California.

19 **IV. STATUTORY BACKGROUND**

20 11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
21 pollutant into waters of the United States, unless such discharge is in compliance with
22 various enumerated sections of the Act. Among other things, Section 301(a) prohibits
23 discharges not authorized by, or in violation of, the terms of an NPDES permit issued
24 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

25 12. Section 402(p) of the Act establishes a framework for regulating municipal and
26 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States
27 with approved NPDES permit programs are authorized by Section 402(p) to regulate
28 industrial storm water discharges through individual permits issued to dischargers or through

1 the issuance of a single, statewide general permit applicable to all industrial storm water
2 dischargers. 33 U.S.C. § 1342(p).

3 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the
4 U.S. EPA has authorized California's State Board to issue NPDES permits including general
5 NPDES permits in California.

6 14. The State Board elected to issue a statewide general permit for industrial storm
7 water discharges. The State Board issued the General Permit on or about November 19,
8 1991, modified the General Permit on or about September 17, 1992, and reissued the
9 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water
10 Act, 33 U.S.C. § 1342(p).

11 15. In order to discharge storm water lawfully in California, industrial dischargers
12 must comply with the terms of the General Permit or have obtained and complied with an
13 individual NPDES permit. 33 U.S.C. § 1311(a).

14 16. The General Permit contains several prohibitions. Effluent Limitation B(3) of
15 the General Permit requires dischargers to reduce or prevent pollutants in their storm water
16 discharges through implementation of the Best Available Technology Economically
17 Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional
18 Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include
19 both nonstructural and structural measures. General Permit, Section A(8). Discharge
20 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-
21 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.
22 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to
23 any surface or ground water that adversely impact human health or the environment.
24 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that
25 cause or contribute to an exceedance of any applicable water quality standards contained in a
26 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

27 17. EPA has established Parameter Benchmark Values as guidelines for
28 determining whether a facility discharging industrial storm water has implemented the

1 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
2 Parameter Benchmark Values for the following parameters, among others: total suspended
3 solids – 100 mg/L; pH – 6.0-9.0 s.u.; and oil/grease – 15 mg/L. The California State Water
4 Resources Control Board has proposed a Benchmark Value for electrical conductance of 200
5 μ mhos/cm.

6 18. In addition to absolute prohibitions, the General Permit contains a variety of
7 substantive and procedural requirements that dischargers must meet. Facilities discharging,
8 or having the potential to discharge, storm water associated with industrial activity that have
9 not obtained an individual NPDES permit must apply for coverage under the State's General
10 Permit by filing a Notice of Intent To Comply ("NOI"). The General Permit requires
11 existing dischargers to have filed their NOIs before March 30, 1992.

12 19. Dischargers must develop and implement a Storm Water Pollution Prevention
13 Plan ("SWPPP"). The SWPPP must describe storm water control equipment and measures
14 that comply with the BAT and BCT standards. The General Permit requires that an initial
15 SWPPP have been developed and implemented before October 1, 1992. The SWPPP must,
16 among other requirements, identify and evaluate sources of pollutants associated with
17 industrial activities that may affect the quality of storm and non-storm water discharges from
18 the facility and identify and implement site-specific best management practices ("BMPs") to
19 reduce or prevent pollutants associated with industrial activities in storm water and
20 authorized non-storm water discharges (Section A(2)). The SWPPP's BMPs must
21 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of
22 individuals and their responsibilities for developing and implementing the SWPPP (Section
23 A(3)); a site map showing the facility boundaries, storm water drainage areas with flow
24 pattern and nearby water bodies, the location of the storm water collection, conveyance and
25 discharge system, structural control measures, impervious areas, areas of actual and potential
26 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
27 handled and stored at the site (Section A(5)); a description of potential pollutant sources
28 including industrial processes, material handling and storage areas, dust and particulate

1 generating activities, and a description of significant spills and leaks, a list of all non-storm
2 water discharges and their sources, and a description of locations where soil erosion may
3 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
4 at the Facility and a description of the BMPs to be implemented at the Facility that will
5 reduce or prevent pollutants in storm water discharges and authorized non-storm water
6 discharges, including structural BMPs where non-structural BMPs are not effective (Section
7 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where
8 necessary (Section A(9),(10)).

9 20. Section C(11)(d) of the General Permit's Standard Provisions requires
10 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).
11 Lastly, Section A(9) of the General Permit requires an annual evaluation of storm water
12 controls including the preparation of an evaluation report and implementation of any
13 additional measures in the SWPPP to respond to the monitoring results and other inspection
14 activities.

15 21. The General Permit requires dischargers commencing industrial activities
16 before October 1, 1992 to develop and implement an adequate written monitoring and
17 reporting program no later than October 1, 1992. Existing facilities covered under the
18 General Permit had to implement all necessary revisions to their monitoring programs no
19 later than August 1, 1997.

20 22. As part of their monitoring program, dischargers must identify all storm water
21 discharge locations that produce a significant storm water discharge, evaluate the
22 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
23 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
24 conduct visual observations of these discharge locations for at least one storm per month
25 during the wet season (October through May) and record their findings in their Annual
26 Report. Dischargers must also collect and analyze storm water samples from at least two
27 storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall
28 collect storm water samples during the first hour of discharge from (1) the first storm event

1 of the wet season, and (2) at least one other storm event in the wet season. All storm water
2 discharge locations shall be sampled.” Section B(5)(c)(i)-(iii) requires dischargers to sample
3 and analyze during the wet season for basic parameters, such as pH, total suspended solids
4 (“TSS”), electrical conductance, and total organic content (“TOC”) or oil and grease
5 (“O&G”), certain industry-specific parameters, and toxic chemicals and other pollutants
6 likely to be in the storm water discharged from the facility. Dischargers must also conduct
7 dry season visual observations to identify sources of non-storm water pollution.

8 23. Section B(14) of the General Permit requires dischargers to submit an annual
9 report by July 1 of each year to the executive officer of the relevant Regional Board. The
10 annual report must be signed and certified by an appropriate corporate officer. Sections
11 B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include
12 in their annual report an evaluation of their storm water controls, including certifying
13 compliance with the General Permit. *See also* Sections C(9) and (10) and B(14).

14 24. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
15 enforcement actions against any “person,” including individuals, corporations, or
16 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
17 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
18 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to
19 \$27,500 per day (violations from January 30, 1997 through March 15, 2004) and \$32,500
20 per day (violations after March 15, 2004) pursuant to Sections 309(d) and 505 of the Act, 33
21 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

22 25. The Regional Board has established water quality standards for the San
23 Francisco Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally
24 referred to as the Basin Plan.

25 26. The Basin Plan provides that “[w]aters shall not contain suspended material in
26 concentrations that cause nuisance or adversely affect beneficial uses” and that “[w]aters
27 shall not contain biostimulatory substances in concentrations that promote aquatic growths to
28 the extent that such growths cause nuisance or adversely affect beneficial uses.”

1 27. The Basin Plan dictates that “[w]aters shall be free of changes in turbidity that
2 cause nuisance or adversely affect beneficial uses.”

3 28. The Basin Plan provides that “[w]aters shall not contain oils, greases, waxes,
4 or other materials in concentrations that result in a visible film or coating on the surface of
5 the water or on objects in the water, that cause nuisance, or that otherwise adversely affect
6 beneficial uses.”

7 29. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor
8 raised above 8.5.”

9 **V. STATEMENT OF FACTS**

10 30. Defendant Recycling Center operates a recycling center and transfer station at
11 1300 Loveridge Road in Pittsburg, California. The Facility is engaged in storing,
12 processing, and trucking various materials. The Facility falls within the Standard Industrial
13 Classification (“SIC”) Code 4212. The Facility covers about 11.7 acres, the majority of
14 which is paved and used for storing and processing different types of metal, plastics,
15 construction material, wood chips, and other materials, including large forklifts, trucks, and
16 other vehicles. On information and belief, Plaintiff alleges that there are several buildings
17 located on the property. On information and belief, Plaintiff alleges that recycling and
18 processing is conducted both inside and outside of these buildings. Materials are transported
19 in and out of these buildings for storage in the paved and unpaved areas of the Facility.

20 31. Defendant channels and collects storm water falling on the Facility though one
21 storm water outfall. Storm water discharged from the outfall enters a channel behind the
22 facility. The channel is a tributary to the Suisun Bay.

23 32. The industrial activities at the site include the storage, processing, and transfer
24 of a variety of materials including construction material and debris, hazardous material,
25 metal, organic material, paper, plastic, and other materials. It also includes the storage and
26 maintenance of trucks used to transfer and dispose of these materials.

27 33. Significant activities at the site take place outside and are exposed to rainfall.
28 These activities include the storage and processing of the numerous types of materials

1 handled by the Facility; the storage and use of vehicles and equipment for materials
2 handling; and the storage, handling, and disposal of waste materials. Loading and delivery
3 of materials occurs both inside and outside. Trucks enter and exit the Facility directly from
4 and to a public road. Trucks are the primary means of moving materials around the unpaved
5 storage areas of the Facility. Plaintiff is informed and believes, and thereupon alleges, that
6 recycling and transfer activities also occur in exposed areas at the Facility. The Facility's
7 exposed areas contain large piles of a variety of materials. Plaintiff alleges on information
8 and belief that many of the exposed surfaces at the Facility are unpaved and sediment and
9 other materials are disturbed as a result of the recycling, storage, and transfer processes.
10 These areas are exposed to storm water and storm flows due to the lack of overhead
11 coverage, berms and other storm water controls.

12 34. Industrial machinery, heavy equipment and vehicles, including trucks and
13 trailers are operated and stored at the Facility in areas exposed to storm water flows. Plaintiff
14 is informed and believes, and thereupon alleges, that such machinery and equipment leak
15 contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed
16 to storm water flows.

17 35. Plaintiff is informed and believes, and thereupon alleges that the storm water
18 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,
19 and other pollutants as it flows toward the storm water drain. Storm water and any
20 pollutants contained in that storm water entering the drain flows directly to the channel
21 behind the Facility.

22 36. The management practices at the Facility are wholly inadequate to prevent the
23 sources of contamination described above from causing the discharge of pollutants to waters
24 of the United States. The Facility lacks sufficient structural controls such as grading,
25 berming, roofing, containment, or drainage structures to prevent rainfall and storm water
26 flows from coming into contact with these and other exposed sources of contaminants. The
27 Facility lacks sufficient structural controls to prevent the discharge of water once
28 contaminated. The Facility lacks adequate storm water pollution treatment technologies to

1 treat storm water once contaminated.

2 37. Since at least December 13, 2002, Defendant has taken samples or arranged for
3 samples to be taken of storm water discharges at the Facility. The sample results were
4 reported in the Facility's annual reports submitted to the Regional Board. Defendant
5 Recycling Center certified each of those annual reports pursuant to Sections A and C of the
6 General Permit.

7 38. Since at least December 13, 2002, the Facility has detected total suspended
8 solids, oil and grease, excess pH, and electrical conductance in storm water discharged from
9 the Facility. Levels of these pollutants detected in the Facility's storm water have been in
10 excess of EPA's numeric parameter benchmark values. Levels of these pollutants detected
11 in the Facility's storm water have been in excess of water quality standards established in the
12 Basin Plan.

13 39. The levels of total suspended solids in storm water detected by the Facility
14 have exceeded the benchmark value for total suspended solids of 100 mg/L established by
15 EPA. For example, on January 7, 2005, the level of suspended solids measured by
16 Defendant in the Facility's discharged storm water was 16,500 mg/L. That level of total
17 suspended solids is 165 times the benchmark value for suspended solids established by EPA.

18 40. The levels of oil and grease in storm water detected by the Facility have
19 exceeded the benchmark value for oil and grease of 15 mg/L established by EPA. For
20 example, on March 20, 2006, the level of oil and grease measured by Defendant in the
21 Facility's discharged storm water was 110 mg/L. That level of oil and grease is over seven
22 times the benchmark value for oil and grease established by EPA.

23 41. The levels of pH in storm water detected by the Facility have exceeded the
24 benchmark value for pH of 6.0-9.0 s.u established by EPA. On January 7, 2005, the level of
25 pH measured by Defendant in the Facility's discharged storm water was 9.71 s.u.

26 42. The electrical conductance levels detected by the Facility in its storm water
27 have been greater than the numeric water quality standards applicable to electrical
28 conductance in California. The electrical conductance levels detected by the Facility in its

1 storm water have been greater than the benchmark value of 200 $\mu\text{mho/cm}$ proposed by the
2 State Board. For example, on March 20, 2006, the electrical conductance level measured by
3 Defendant in the Facility's discharged storm water was 821 $\mu\text{mho/cm}$. That electrical
4 conductance level is more than four times the State Board's proposed benchmark value.

5 43. On information and belief, Plaintiff alleges that Defendants have failed to
6 conduct visual observations of storm water discharges from every discharge location at the
7 Facility at least once per month during each wet season since 2002-2003 in violation of
8 Section B(4) of the General Permit.

9 44. On information and belief, Plaintiff alleges that since at least December 13,
10 2002, Defendant has failed to implement BAT and BCT at the Facility for its discharges of
11 suspended solids, pH, electrical conductance, oil and grease, and other pollutants. Section
12 B(3) of the General Permit requires that Defendant implement BAT for toxic and
13 nonconventional pollutants and BCT for conventional pollutants by no later than October 1,
14 1992. As of the date of this Complaint, Defendant has failed to implement BAT and BCT.

15 45. On information and belief, Plaintiff alleges that since at least October 1, 1992,
16 Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan
17 ("SWPPP") for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the
18 SWPPP prepared for the Facility does not set forth site-specific best management practices
19 for the Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed
20 and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not
21 include an assessment of potential pollutant sources, structural pollutant control measures
22 employed by the Defendant, a list of actual and potential areas of pollutant contact, or a
23 description of best management practices to be implemented at the Facility to reduce
24 pollutant discharges. According to information available to CSPA, Defendant's SWPPP has
25 not been evaluated to ensure effectiveness and revised where necessary to further reduce
26 pollutant discharges. Plaintiff is informed and believes, and thereupon alleges, that the
27 SWPPP does not include each of the mandatory elements required by Section A of the
28 General Permit. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP

1 does not contain an accurate map that clearly delineates the boundaries of the Facility.

2 46. Information available to CSPA indicates that as a result of these practices,
3 storm water containing excessive pollutants is being discharged during rain events from the
4 Facility directly to a channel that flows into Suisun Bay. Suisun Bay is a part of San
5 Francisco Bay.

6 47. The San Francisco Bay has been identified by the Regional Board, State Board
7 and federal EPA as impaired for several pollutants, including mercury and unknown toxicity.

8 48. Plaintiff is informed and believes, and thereupon alleges, that pollutants
9 discharged by the Facility in its storm water are contributing to violations of water quality
10 standards that apply to the San Francisco Bay and its tributaries. Plaintiff is informed and
11 believes, and thereupon alleges, that Defendant is discharging suspended solids, oil and
12 grease, pH and other un-monitored pollutants that are causing or contributing to exceedances
13 of applicable water quality standards. Defendant is contributing to violations of water
14 quality standards including, but not limited to, the narrative water quality standard for
15 toxicity and the numeric water quality standard for electrical conductance.

16 49. Plaintiff is informed and believes, and thereupon alleges, that, Defendant has
17 failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent
18 with Section A(9) of the General Permit.

19 50. Plaintiff is informed and believes that Defendant failed to submit to the
20 Regional Board a true and complete annual report certifying compliance with the General
21 Permit since at least December 13, 2002. Pursuant to Sections A(9)(d), B(14), and C(9),
22 (10) of the General Permit, Defendant must submit an annual report, that is signed and
23 certified by the appropriate corporate officer, outlining the Facility's storm water controls
24 and certifying compliance with the General Permit. Plaintiff is informed and believes, and
25 thereupon alleges, that Defendant has signed incomplete annual reports that purported to
26 comply with the General Permit when there was significant noncompliance at the Facility.

27 51. Information available to Plaintiff indicates that Defendant has not fulfilled the
28 requirements set forth in the General Permit for discharges from the Facility due to the

1 continued discharge of polluted storm water. Plaintiff is informed and believes, and
 2 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and
 3 continuing.

4 **VI. CLAIMS FOR RELIEF**

5 **FIRST CAUSE OF ACTION**

6 **Failure to Develop and Implement the Best Available and 7 Best Conventional Treatment Technologies 8 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

9 52. Plaintiff realleges and incorporate Paragraphs 1-51, as if fully set forth herein.

10 53. The General Permit's SWPPP requirements and Effluent Limitation B(3)
 11 require dischargers to reduce or prevent pollutants in their storm water discharges through
 12 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
 13 pollutants. Defendant has failed to implement BAT and BCT at the Facility for its
 14 discharges of suspended solids, pH, electrical conductance, oil and grease, and other un-
 15 monitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

16 54. Each day since October 1, 1992 that Defendant has failed to develop and
 17 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
 18 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

19 55. Defendant has been in violation of the BAT/BCT requirements every day since
 20 October 1, 1992. Defendant continues to be in violation of the BAT/BCT requirements each
 21 day that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

22 **SECOND CAUSE OF ACTION**

23 **Failure to Prepare, Implement, Review, and Update 24 an Adequate Storm Water Pollution Prevention Plan 25 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

26 56. Plaintiff realleges and incorporate Paragraphs 1-55, as if fully set forth herein.

27 57. Section A and Provision E of the General Permit requires dischargers of storm
 28 water associated with industrial activity to have developed and be implementing an adequate
 SWPPP no later than October 1, 1992.

58. Defendant has failed to develop and implement an adequate SWPPP for the
 Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the

Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various materials, without appropriate best management practices; the continued exposure of significant quantities of various materials to storm water flows; the continued exposure and tracking of waste resulting from the operation or maintenance of vehicles at the site; the failure to either treat storm water prior to discharge or to implement effective containment practices; and the continued discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark values.

59. Defendant has failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

60. Each day since October 1, 1992 that Defendant has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

61. Defendant has been in violation of the SWPPP requirements every day since October 1, 1992. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

THIRD CAUSE OF ACTION

Failure to Develop and Implement an Adequate Monitoring and Reporting Program (Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

62. Plaintiff re-alleges and incorporates Paragraphs 1-61, inclusive, as if fully set forth herein.

63. Section B of the General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

64. Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendant's ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to conduct monthly visual observations of storm water discharges.

65. Each day since October 1, 1992 that Defendant has failed to develop and

1 implement an adequate monitoring and reporting program for the Facility in violation of the
 2 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §
 3 1311(a). The absence of requisite monitoring and analytical results are ongoing and
 4 continuous violations of the Act.

5 **FOURTH CAUSE OF ACTION**
 6 **Discharges of Contaminated Storm Water**
 7 **in Violation of Permit Conditions and the Act**
 8 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

9 66. Plaintiff re-alleges and incorporates Paragraphs 1-65, inclusive, as if fully set
 10 forth herein.

11 67. Discharge Prohibition A(2) of the General Permit requires that storm water
 12 discharges and authorized non-storm water discharges shall not cause or threaten to cause
 13 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
 14 General Permit require that storm water discharges and authorized non-storm water discharges
 15 shall not adversely impact human health or the environment, and shall not cause or contribute
 16 to a violation of any water quality standards contained in a Statewide Water Quality Control
 17 Plan or the applicable Regional Board's Basin Plan.

18 68. Plaintiff is informed and believes, and thereupon alleges, that since at least
 19 December 13, 2002, Defendant has been discharging polluted storm water from the Facility
 20 directly to channels or storm drains that flow into the Suisun Bay and the San Francisco Bay,
 21 in violation of the Discharge Prohibition A(2) of the General Permit.

22 69. During every rain event, rainwater flows freely over exposed materials, waste
 23 products, and other accumulated pollutants at the Facility, becoming contaminated with these
 24 pollutants. The rainwater then flows untreated from the Facility into a channel or storm drain.
 25 This contaminated storm water flows into Suisun Bay, a part of the San Francisco Bay.

26 70. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
 27 contaminated storm water are causing pollution and contamination of the waters of the United
 28 States in violation of Discharge Prohibition A(2) of the General Permit.

71. Plaintiff is informed and believes, and thereupon alleges, that these discharges

1 of contaminated storm water are adversely affecting human health and the environment in
2 violation of Receiving Water Limitation C(1) of the General Permit.

3 72. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
4 contaminated storm water are contributing to the violation of the applicable water quality
5 standards in a Statewide Water Quality Control Plan and/or the applicable Regional Board's
6 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

7 73. Every day since at least December 13, 2002, that Defendant has discharged and
8 continues to discharge polluted storm water from the Facility in violation of the General Permit
9 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
10 violations are ongoing and continuous.

11 **FIFTH CAUSE OF ACTION**

12 **False Certification of Compliance In Annual Report (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

13 74. Plaintiff realleges and incorporate Paragraphs 1-73, as if fully set forth herein.

14 75. Defendant has falsely certified compliance with the General Permit in each of
15 the annual reports submitted to the Regional Board since at least June 2002.

16 76. Each day since at least June 26, 2002 that Defendant has falsely certified
17 compliance with the General Permit is a separate and distinct violation of the General Permit
18 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of
19 the General Permit's certification requirement each day that it maintains its false certification
20 of its compliance with the General Permit.

21 **VII. RELIEF REQUESTED**

22 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

23 a. Declare Defendant to have violated and to be in violation of the Act as
24 alleged herein;

25 b. Enjoin Defendant from discharging polluted storm water from the Facility
26 unless authorized by the Permit;

27 c. Enjoin Defendant from further violating the substantive and procedural
28 requirements of the Permit;

1 d. Order Defendant to immediately implement storm water pollution control
2 and treatment technologies and measures that are equivalent to BAT or BCT and prevent
3 pollutants in the Facility's storm water from contributing to violations of any water quality
4 standards;

5 e. Order Defendant to comply with the Permit's monitoring and reporting
6 requirements, including ordering supplemental monitoring to compensate for past monitoring
7 violations;

8 f. Order Defendant to prepare a SWPPP consistent with the Permit's
9 requirements and implement procedures to regularly review and update the SWPPP;

10 g. Order Defendant to provide Plaintiff with reports documenting the quality
11 and quantity of their discharges to waters of the United States and their efforts to comply with
12 the Act and the Court's orders;

13 h. Order Defendant to pay civil penalties of \$27,500 per day per violation for
14 all violations occurring before March 15, 2004, and \$32,500 per day per violation for all
15 violations occurring after August 28, 2002, for each violation of the Act pursuant to Sections
16 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

17 i. Order Defendant to take appropriate actions to restore the quality of waters
18 impaired or adversely affected by their activities;

19 j. Award Plaintiff's costs (including reasonable investigative, attorney, witness,
20 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

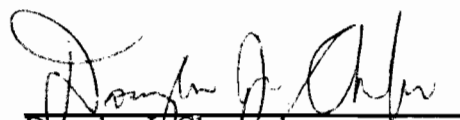
21 k. Award any such other and further relief as this Court may deem appropriate.

22
23 Dated: August 28, 2007

Respectfully submitted,

LAW OFFICE OF MICHAEL R. LOZEAU

24
25
26 By:



Douglas J. Chertak
Attorney for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE

EXHIBIT A

California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 16, 2007

Silvio Garaventa, Jr., Vice President
Contra Costa Waste Service
P.O. Box 5397
Concord, CA 94520

Jim Nejedly, Operations Manager
Recycling Center and Transfer Station
1300 Loveridge Road
Pittsburg, CA 94565

Mary Garaventa
Agent for Service of Process
4080 Mallard Dr.
Concord, CA 94520

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Messrs. Garaventa, Jr., Nejedly and Ms. Garaventa:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("Act") that CSPA believes are occurring at the Recycling Center and Transfer Station located at 1300 Loveridge Road in Pittsburg, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Sacramento River, San Joaquin River, the Sacramento-San Joaquin River Delta ("the Delta"), San Francisco Bay and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Recycling Center and Transfer Station (all recipients are hereinafter collectively referred to as "Recycling Center").

This letter addresses Recycling Center's unlawful discharge of pollutants from the Facility to waters of the United States. According to the Facility's NOI, it discharges to the City of Pittsburg's municipal storm sewer system and Kirker Creek, which then flow into the San Joaquin River, the Delta and Suisun Bay. The facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State

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Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the State Board and California Regional Water Quality Control Board ("Regional Board") is 2-07S011211. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Recycling Center is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Recycling Center, Silvio Garaventa, Jr., and Jim Nejedly under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On or about August 20, 1997, Recycling Center filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). Recycling Center certified that the Facility is classified under SIC code 4212 ("trucking without storage"). According to the Recycling Center's NOI, the Facility collects and discharges storm water from its 11.7 acre industrial site into one storm drain outlet located at the Facility. Recycling Center discharges storm water to a vegetated channel that, according to the Facility's NOI, is then discharged either to Kirker Creek and the Pittsburg storm drains or both, which then empties into Suisun Bay and the western edge of the Delta.

The Central Valley Regional Water Quality Control Board has identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>.

The San Francisco Bay Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the San Francisco Bay, including Kirker Creek and Suisun Bay, in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the Basin Plan. *See* <http://www.swrcb.ca.gov/rwqcb2/basinplan.htm>. The beneficial uses of the Bay region's waters, including Kirker Creek and Suisun Bay, include among others contact and non-contact recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, . . . , camping, boating, . . . , hunting, sightseeing, or aesthetic enjoyment in conjunction with the

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above activities.” Basin Plan at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of Suisin Bay, Kirker Creek, and the San Joaquin River and Delta for contact and noncontact water recreation. Pollutant discharges of, for example, high suspended solids and other pollutants in industrial storm water also contribute to the existing impairments of Kirker Creek and the Suisun Bay, including unknown toxicity, high electrical conductivity and low dissolved oxygen.

The Regional Board has established water quality standards for Suisin Bay and its tributaries. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce significant alterations in population or community ecology or receiving water biota.” *Id.* at 3.3.8. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at 3.3.9. It prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3.3.7. The Basin Plan establishes a dissolved oxygen standard of 7.0 mg/L for waters upstream from the Carquinez Bridge. *Id.* at 3.3.5. It limits floating material, stating that “[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.6. The Basin Plan incorporates the objectives contained in the State Water Board’s 1995 “Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary” (*Id.* at 3.5), which establishes a standard for electrical conductivity in the Delta of 0.45 mmhos/cm from April 1 through August 31, as well as less stringent standards for various low flow conditions.

The U.S. Environmental Protection Agency (“EPA”) has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Recycling Center: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil & grease (“O&G”) – 15 mg/L, aluminum – .75 mg/L, zinc – 0.117 mg/L, iron – 1 mg/L, nitrate + nitrite nitrogen (“N+N”) – 0.68 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

Recycling Center has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water

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discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination or nuisance.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Recycling Center has discharged and continues to discharge storm water with unacceptable levels of total suspended solids, specific conductivity, pH, and other pollutants in violation of the General Permit. Recycling Center's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Concentration	Objective	Benchmark
3/20/2006	TSS	1190 mg/L	Narrative	100 mg/L
3/20/2006	Specific Conductivity	821 µmho/cm	Narrative	200 µmho/cm (proposed)
3/20/2006	O&G	110 mg/L	Narrative	15 mg/L
12/1/2005	TSS	1870 mg/L	Narrative	100 mg/L
3/22/2005	TSS	1320 mg/L	Narrative	100 mg/L
3/22/2005	Specific Conductivity	670 µmho/cm	Narrative	200 µmho/cm (proposed)
3/22/2005	O&G	32 mg/L	Narrative	15 mg/L
1/7/2005	pH	9.71	Narrative	6.0 – 9.0
1/7/2005	TSS	16500 mg/L	Narrative	100 mg/L

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1/7/2005	Specific Conductivity	448 µmho/cm	Narrative	200 µmho/cm (proposed)
2/16/2004	TSS	770 mg/L	Narrative	100 mg/L
2/16/2004	Specific Conductivity	230 µmho/cm	Narrative	200 µmho/cm (proposed)
12/5/2003	TSS	340 mg/L	Narrative	610 mg/L
12/13/2002	TSS	740 mg/L	Narrative	100 mg/L
12/13/2002	Specific Conductivity	450 µmho/cm	Narrative	200 µmho/cm (proposed)

CSPA's investigation, including its review of Recycling Center's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that Recycling Center has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, O&G, pH and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Recycling Center was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Recycling Center is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT. In addition, the above numbers indicate that the facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every significant rain event that has occurred since May 16, 2002, and that will occur at the Facility subsequent to the date of this Notice of Violations and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Recycling Center has discharged storm water containing impermissible levels of TSS, O&G, specific conductivity, and pH in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water to each storm drain at or adjacent to the Facility containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Recycling Center is subject to penalties for violations of the General Permit and the Act since May 16, 2002.

B. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary

Recycling Center
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revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CSPA's investigation of the conditions at the Facility as well as Recycling Center's Annual Reports indicate that Recycling Center has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Recycling Center has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Recycling Center has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least May 16, 2002, and will continue to be in violation every day that Recycling Center fails to develop and implement an effective SWPPP. Recycling Center is subject to penalties for violations of the Order and the Act occurring since May 16, 2002.

C. *Failure to Conduct Monthly Visual Observations of Storm Water Discharges*

Section B(4)(a) of the General Permit requires dischargers of storm water to conduct visual observations of storm water discharges for one storm event per month during the wet season. The observations must take place during the first hour of the discharge. Section B(4)(b) indicates that the observations are only required of discharges that occur during scheduled facility operating hours and during daylight hours preceded by three working days without storm water discharges. Section B(4)(c) requires the SWPPP to be revised based on the observations and implemented in accordance with Section A of the General Permit (described above). Based

Recycling Center
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on information and belief, Recycling Center has failed to conduct visual observations of storm water discharges during qualifying storm events for the following months: November, 2002; December, 2002; January, 2003; March, 2003; April, 2003; November, 2003; February, 2004; March, 2004; May, 2004; October, 2004; November, 2004; February, 2005; May, 2005; November, 2005; March, 2006; April, 2006; May, 2006.

D. Failure to File True and Correct Annual Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For at least the last five years, Recycling Center and its agent, Jim Nejedly, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, Recycling Center and Mr. Nejedly have violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Recycling Center or its agent failed to submit a complete or correct report and every time Recycling Center or its agents falsely purported to comply with the Act. Recycling Center is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since July 1, 2002.

IV. Persons Responsible for the Violations.

CSPA puts Recycling Center, Silvio Garaventa, Jr., and Jim Nejedly on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Recycling Center, Silvio Garaventa, Jr., and Jim Nejedly on notice that it intends to include those subsequently identified persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel. (209) 464-5067

VI. Counsel.

Recycling Center
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CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
Douglas J. Chermak
Law Office of Michael R. Lozeau
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
mrlozeau@lozeaulaw.com

Andrew L. Packard
Michael Lynes
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, California 94952
Tel. (707) 763-7227
andrew@packardlawoffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Recycling Center to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Recycling Center and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", with a stylized, flowing script.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Steve Johnson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Tom Howard, Acting Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Alberto Gonzalez, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Wayne Natri, Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A
Rain Dates, Recycling Center, Pittsburg, CA

November 07 2002	February 26 2004	December 21 2005
December 09 2002	March 01 2004	December 22 2005
December 14 2002	May 28 2004	December 25 2005
December 16 2002	October 19 2004	December 27 2005
December 20 2002	October 23 2004	December 28 2005
December 21 2002	October 24 2004	December 30 2005
December 27 2002	November 03 2004	December 31 2005
December 30 2002	November 09 2004	January 01 2006
January 09 2003	November 10 2004	January 02 2006
January 10 2003	November 11 2004	January 18 2006
January 21 2003	December 06 2004	January 30 2006
March 14 2003	December 07 2004	February 17 2006
March 16 2003	December 08 2004	February 26 2006
March 22 2003	December 27 2004	February 27 2006
April 03 2003	December 28 2004	March 02 2006
April 12 2003	December 29 2004	March 03 2006
May 02 2003	December 30 2004	March 06 2006
May 03 2003	December 31 2004	March 11 2006
August 21 2003	January 01 2005	March 13 2006
November 06 2003	January 02 2005	March 17 2006
November 08 2003	January 06 2005	March 18 2006
November 15 2003	January 07 2005	March 21 2006
November 30 2003	January 08 2005	March 25 2006
December 01 2003	January 10 2005	March 28 2006
December 04 2003	January 11 2005	March 29 2006
December 06 2003	January 25 2005	April 03 2006
December 09 2003	January 27 2005	April 04 2006
December 10 2003	February 14 2005	April 05 2006
December 13 2003	February 15 2005	April 11 2006
December 19 2003	February 17 2005	April 12 2006
December 22 2003	February 19 2005	April 13 2006
December 23 2003	February 20 2005	April 17 2006
December 24 2003	February 26 2005	May 21 2006
December 26 2003	February 27 2005	November 01 2006
December 28 2003	March 01 2005	November 03 2006
December 29 2003	March 03 2005	November 10 2006
January 01 2004	March 18 2005	December 14 2006
January 02 2004	March 19 2005	December 21 2006
January 06 2004	March 21 2005	January 28 2007
January 23 2004	March 22 2005	February 08 2007
February 02 2004	March 27 2005	February 09 2007
February 03 2004	April 08 2005	February 10 2007
February 15 2004	April 27 2005	February 12 2007
February 16 2004	May 07 2005	February 22 2007
February 17 2004	May 08 2005	February 25 2007
February 18 2004	November 28 2005	February 26 2007
February 21 2004	November 30 2005	February 27 2007
February 24 2004	December 17 2005	April 14 2007
February 25 2004	December 18 2005	April 21 2007
	December 20 2005	April 22 2007

Notice of Violations and Intent to File Suit